Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

IN RE ANGEL RUIZ RIVERA

Petitioner

v.

THE HONORABLE SANDRA LYNCH
CHIEF JUDGE
U.S. COURT OF APPEALS
FOR THE FIRST CIRCUIT

Respondent

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES SUPREME COURT

PETITION FOR A WRIT OF MANDAMUS

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QUESTIONS PRESENTED

Can a U.S. Court of Appeals refuse to evaluate a petition for rehearing en banc timely filed by a named party to the controversy and its appeal and consequently forfeit the right of that party to appeal from an action that finally disposes of one's rights which has a statutory basis? 28 U.S.C. section 1291.

Can a U.S. Court of Appeals rule against the precedents of eight (8) different Circuit Courts including itself, when it determined that a named party to the controversy negatively affected by its decision cannot continue to appear on its appeal, especially when same party was the one who filed the Notice of Appeal, upon which the Circuit acted?

Can a U.S. Court of Appeals rule against the stare decisis of this Court in a decision where thou addressed the pertinent legal issue expressly, explicitly and with specificity?

LIST OF ALL THE PARTIES

The Petitioner is: Angel Ruiz Rivera.
The Respondent is The Honorable Sandra Lynch Chief Judge of the U.S. Court of Appeals for the First Circuit

CORPORATE DISCLOSURE STATEMENT

I the Petitioner, Angel Ruiz Rivera, appearing here Pro Se, hereby certify that there is no parent corporation, or publicly held company owning 10% or more of the corporation's stock

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U.S. CONSTITUTION

Fifth (V) Amendment, specifically with regards to the clause that forewarns that no person shall be deprived of life, liberty, or property, without due process of law..... 1

CITATIONS AND THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY THE COURTS

Order of August 5, 2008 denying "Motion For Conversion of the Motion Requesting Court To Clarify Its Order Into A Motion For Panel Rehearing and/or Rehearing En Banc".

Order of April 30, 2008 denying Co-Plaintiff Angel Ruiz Rivera's "Motion For Reconsideration" of Order dismissing him as a party.

CONCISE STATEMENT OF THE BASIS FOR JURISDICTION

The date the order sought to be reviewed was entered was August 5, 2008.

Jurisdiction of this Court is authorized by 28 U.S.C. 1651. See also 28 U.S.C. 1361.

THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE.

Fifth (V) Amendment, specifically with regards to the clause that forewarns that no person shall be deprived of life liberty, or property, without due process of law.

Rule 35 of the Federal Rules of Appellate Procedure.

CONCISE STATEMENT OF THE CASE SETTING OUT THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

The Petitioner is the promoter, Co- Plaintiff, signatory and filer of the controversy below and of all the Notices of Appeals, that of the appeal object of the instant Petition and still others that have evolved from the original petition for judicial review of the final agency decision initially captioned at the U.S District Court for the District of Puerto Rico (P.R.) as: "Angel Ruiz Rivera and Instituto de Educacion Universal (IEU), Inc. v. U.S. Department of Education (USDE)", 98-2225(RLA). The Petitioner also acted as same for its first appeal 99-1628 (vacated and remanded; and subsequent appeals; 05-1775 and 06-1562, all "evaluated" by the First Circuit. He also acted as same in preceding controversy 96-1893(JAF), appeal 99-1398, (the Bivens Complaint), which was consolidated with 99-1628. By vacating and remanding the latter and not the former, the First Circuit produced the contradictory result of pre-exonerating the federal officers involved in the controversy before the judicial review of their actions was scrutinized by the District Court to which it was remanded.

Presently, Petitioner is awaiting resolution of an "Urgent Motion To The Chief Judge Beseeching For A Ruling On The Motion For Rehearing En Banc Timely Filed" in appeal 06-1562. See Appendix below under vi.

The instant Petition is filed to request that thou order the First Circuit Judge to rule upon the above Motion, accord the jurisprudence of eight (8)

circuits, including itself, and thou own stare decisis. If the First Circuit may be allowed to not rule, the due process rights of the Petitioner will be confiscated, after more than twelve years (12) struggling, not only for Justice, but for a modicum of due process, in lieu of a trial on its merits. All this in a controversy where overwhelming smoking gun evidence was timely produced proving abuse of process and fraud upon the courts.

The basis of jurisdiction in the court of first instance were: 28 U.S.C. 1331, 1332, and Rule 17 (b) of the Federal Rules of Civil Procedure.

DIRECT AND CONCISE ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

Heretofore, all the last motions filed before the Circuit by the Petitioner have been denied based on the Circuit's evidently obvious erroneous determination that he somehow discontinued to have standing to appear in the present appeal (06-1562), because at an earlier appeal (05-1775), it determined that because during the first appeal of this controversy (99-1628), Petitioner had withdrawn his appearance once he was able to retain legal counsel for the Co-Plaintiff/Co-Appellant, Instituto de Educacion Universal (IEU), Inc., ergo, he forfeited his right to appeal this latest and different appeal of a different decision. For the Circuit, even when he was a named party and much more as we have seen, that withdrawal had the effect of forfeiting his legal rights in the subsequent appeals that have ensued, even when it was Petitioner himself the one who filed all of the Notice of Appeals in this and even all of the appeals that ensued.

Incidentally, Petitioner Angel Ruiz Rivera, for many years, had been appearing Pro Se for IEU the corporation, before the administrative agency forum, including before its own Administrative Law Judge (ALJ), the District Court judges and even the own First Circuit panel and en banc, with all these forums legally untenable acquiescence. [1] Now, not only have all the above mentioned motions been denied by the First Circuit, based on the supposed discontinuance of the Co-Plaintiff/Co-Appellant/Petitioner standing to continue appearing, but they have also been ordered to be stricken from the record.

Petitioner has timely filed motions requesting the First Circuit to clarify why in denying these timely filed motions and ordering them to be stricken from the record, it has departed from the jurisprudential precedents of eight (8) circuits including itself. In these decisions, cited infra, the stare decisis of this Court has been ratified in that "the right of that party to appeal from an action that finally disposes of one's rights which has a statutory basis". 28 U.S.C. section 1291, as cited in Devlin, infra.

The First Circuit has judicial knowledge of the fact that the Internal Revenue Service (IRS) imputed Trust Funds Liabilities over Petitioner Ruiz Rivera personally for the taxes allegedly owed by the corporation, IEU, making him the "responsible person" (IRS Code section 6672), ergo, liable for those taxes. Consequently, Ruiz Rivera's standing to

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[1] Incidentally, Petitioners have cited Grace v. Leumi Trust Co. of New York, No. 04-5824-cv (2d Cir. 04/04/2006), in support of their proposition that for this reason only, the appeal below should be granted and the controversy below declared void.

appear in the instant appeal has been pre-empted, ergo, preserved by the IRS actions over his person, which negatively affect him, his successors and are not dischargeable even through a personal bankruptcy. For this reason, he has claimed elsewhere that this predicament he has consequently fallen into, is the quintessential injury in fact provoked by the government, deserving de minimis, the right to defend oneself.

See Hispanic Society of New York City Police v. New York City Police 806 F.2d 1147, (2nd.Cir. 1986); In re Piper Funds, Institutional Government Income Portfolio Litigation, 71 F.3d 298, 301 (8th Cir. 1995); In re Estate of Marcos Human Rights Litigation, 94 F.3d 539 (9th Cir. 1996); United States v. Kirschenbaum, 156 F.3d 784 (7th Cir. 1998); Kaplan v. Rand, 192 F.3d 60 (2d Cir. 1999); Microsystems Software, Inc. v. Scandinavia Online AB, 226 F.3d 35 (1st Cir. 2000); Castillo v. Cameron County, 238 F. 3d 325 (5th Cir. 2001); Securities and Exchange Commission v. Forex Asset Management, 242 F.3d 325 (5th Cir. 2001); Karaha Bodas Co. v. Perusahaan Pertambangan, 313 F.3d 70 (2d Cir. 2002); Goya Foods, Inc. v. Wallack Management Co., 290 F.3d 63 (1st.Cir.5/17/2002); Plain v. Murphy Family Farms, 296 F.3d 975 (10th Cir. 07/16/2002); Cardoza v. Pacific States Steel Corporation, 320 F.3d 989 (9th Cir. 2003); AAL High Yield Bond Fund v. Banc of America Securities, 361 F.3d 1305 (11th Cir. 2004), Churchill Village v. General Electric, 361 F.3d 566 (9th Cir. 2004); Pediatric Specialty Care v. Arkansas Department of Human Services, 364 F.3d 925, (8th.Cir. 2004); In re Sealed Cases, 363 U.S. App. D.C. 214, 381 F.3d 1205 (D.C. Cir. 2004); United States v. Alisal Water Corp., No. 02-15907 (9th Cir. 2005);

Velez-Diaz v. Vega Irizarry, 421 F.3d 71 (1st.Cir. 9/2/2005); Official Committee of Unsecured Creditors of WorldCom, Inc. v. Securities and Exchange Commission, 467 F.3d 73 (2d Cir. 2006).

More importantly, the First Circuit decisions against Ruiz Rivera in this vein are inconsistent and directly in conflict with this Court's special reference to the specific legal issue in question on its express clarification in Devlin v. Scardelleti, 122 S.Ct. 2005, (2002) where thou admonished that:

> **We have never, however, restricted the right to appeal to named parties to the litigation.** (Citations omitted). (Emphasis added).

In view of all the above cited precedents, it is diaphanously clear that the Circuit's order preconfiscating the due process rights of Angel Ruiz Rivera is not only inconsistent with all judicial precedent but discriminatory and an usurpation of its own authority. It is only consistent with the extreme bias and prejudice with which all the Petitioner's prayers for Justice have been treated for the past long twelve (12) years. This amidst the fait accompli that the Petitioners timely produced overwhelming exonerating evidence that prove without a doubt that they were victims of a vexatious abuse of the legal process, originated by the USDE legal counsels who occluded exonerating evidence, suborned perjury, intimidated witnesses, obstructed justice and committed fraud upon the courts.

All of the above due process violations have been heretofore condoned with total impunity, due to the egregious dereliction in their ministerial and ethical

duties by the intervening U.S. Attorneys who neglected to prevent this fraud, while acting in their investigative role as their client agency counsels. See related controversy, Ruiz Rivera v. Gonzales, Et Al, Et Al., 08-1560 at the U.S. District Court for the District of Columbia.

CONCLUSION

In summary, we respectfully pray that this Court orders the Circuit to rule on the pending petition for rehearing en banc, especially since in the past our previous petitions for rehearing en banc have been decided by a majority and not unanimity of the judges. Incidentally, in the past, when this same Petitioner has timely moved to request the composition of the en banc vote, it has been also unreasonably denied by the First Circuit. So I state, allege and pray. Respectfully submitted, today, November 3, 2008.

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APPENDIX

I. The orders entered in conjunction with the judgment sought to be reviewed.
II. Any other relevant order entered in the case by courts or administrative agencies
VI. Any other material the petitioner believes essential to understand the petition.

I. The orders entered in conjunction with the judgment sought to be reviewed.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 06-1562

ANGEL RUIZ RIVERA, ET AL.
Plaintiffs, Appellants
v.
U.S. DEPARTMENT OF EDUCATION, ET AL.,
Defendants, Appellees.

Before
Lynch, Chief Judge, Torruella and Selya, Circuit Judges

ORDER OF THE COURT
Entered August 5, 2008.

Currently pending in the above-mentioned appeal are (1) the motion of Angel Ruiz-Rivera asking that this court clarify its order of April 30, 2008 denying his motion reconsideration and (2) a request that we convert the motion for clarification into a motion for rehearing and for a stay of mandate. However, and as noted before, since appellant is not a proper party to this appeal, these motions must be stricken.
So ordered.

By the Court:
/s/Richard Cushing Donovan

ii. Any other relevant order entered in the case by courts or administrative agencies

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
NO.06-1562

ANGEL RUIZ RIVERA, ET AL.
Plaintiffs, Appellants
v.
U.S. DEPARTMENT OF EDUCATION, ET AL.,
Defendants, Appellees.

Before
Torruella Circuit Judge, Selya, Senior Judge and Lynch, Circuit Judge

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ORDER OF COURT
Entered April 10, 2008.

For the reasons stated in one of our earlier opinions in these proceedings, see Ruiz-Rivera v. United States Dep't of Education, No.05-1775, 2006 WL 1343431 (1st. Cir. May 10, 2006), the motion of Angel Ruiz Rivera for reconsideration of our order dismissing him as a party to this appeal is denied. Since Ruiz_Rivera is not a party, the other pending motions that he has filed must be stricken.
So ordered.

By the Court:
/s/Richard Cushing Donovan

vi. Any other material the petitioner believes essential to understand the petition

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

ANGEL RUIZ RIVERA AND
INSTITUTO DE EDUCACION UNIVERSAL
PLAINTIFFS/APPELLANTS
V. 06-1562
RICHARD RILEY AND THE
U.S. DEPARTMENT OF EDUCATION
DEFENDANTS/APPELEES

URGENT MOTION TO THE CHIEF JUDGE BESEECHING FOR A RULING ON THE MOTION FOR REHEARING EN BANC TIMELY FILED

TO THE HONORABLE U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT (HUSCA1C):

Comes now the Co-Plaintiff, Co-Appellant, (CP/CA), Angel Ruiz Rivera (ARR), appearing here Pro se (PS), promoter, signatory and filer of the controversy below, of its previous, related appeals, and the instant one, and respectfully states, alleges and pray as follows:

1. That as this HUSCA1C has judicial knowledge of, this CP/CA appeared before the Defendants/Appellees (D/A's), the Secretary of the U.S. Department of Education (USDE) and its agency, Pro Se (PS) for himself, and also in representation of CP/CA, Instituto de Educacion Universal (IEU).

2. That this HUSCA1C has judicial knowledge of the fact that same appearance by this CP/CA, a lay person, for IEU the corporation, was done in good faith, and due to the P/A's lack of capacity to pay legal counsel. This incapacity only grew as a result of the D/A's having unconstitutionally preconfiscated without due process on February 1997, through a Notice of Offset, all the funds owed to the P/A's at the time ($2.263 million dollars), while the Administrative Law Judge (ALJ) decision had been appealed to the Secretary by both parties, and consequently was not final much less firm. This clear taking of property without due process, was a reprisal taken against the P/A's by various of the same USDE officers who were also Defendants in related controversy 96-1893 (JAF), a Constitutional, Civil Rights and Bivens torts action, timely filed against them by the P/A's. It was done in obvious retaliation for the latter having exerted their First Amendment rights by suing the government for the redress of grievances and these own officers for their egregious, vexatious and wanton ultra vires and discriminatory acts against the P/A's for reason of their national origin and ethnicity. This taking also injured our Sixth Amendment rights to retain the legal counsel of our choice.

3. That same appearance by this CP/CA for IEU the corporation during the administrative proceedings was never opposed nor objected to by the USDE legal counsels most probably since it obviously worked to their advantage to litigate against a functionally illiterate in legal matters.

4. That we learned ex-post-facto that the applicable and controlling stare decisis of the U.S. Supreme Court (the Court), as established in

Rowland v. California Men's Colony, 506 U.S. 194 (1993) and its progeny, expressly prohibits that a lay person may represent a corporation in federal court. [2]

5. That the P/A's have timely raised before the forum below and this one, the existence of precedent where a "final" decision nine (9) years old was vacated as void for the president of a corporation having been allowed to appear at a certain stage of the process for the corporation without being a lawyer. See Grace v. Leumi Trust Co. of New York, No. 04-5824-cv (2d Cir. 04/04/2006).

6. That after the administrative proceedings before the USDE were over, this CP/CA was allowed **during many years** to continue to appear for IEU the corporation, before the District Court below and this own HUSCA1C, without the opposition nor objection by the U.S. Attorney's Office (USAO) intervening Attorneys.

7. That this HUSCA1C has judicial knowledge of the fait accompli that this CP/CA appeared before its panel in the oral argument of 99-1398 [the appeal of 96-1893(JAF), the Constitutional, Civil Rights and

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Although there were certain few exceptions to the rule that a corporation may appear in federal court only through legal counsel found in: *United States* v. *Reeves*, 431 F. 2d 1187 (CA9 1970) *(per curiam)* (partner can appear on behalf of a partnership), and *In re Holliday's Tax Services, Inc.*, 417 F. Supp. 182 (EDNY 1976) (sole shareholder can appear for a closely held corporation), affirmance order *sub nom. Holliday's Tax Services, Inc.* v. *Hauptman*, 614 F. 2d 1287 (CA2 1979). Rowland v. California Men's Colony, supra. See also *O'Reilly v. New York Times Co.*, 692 F.2d 863 (2nd Cir. 11/02/1982), where a priest was allowed to represent a non-profit corporation, where there are no stockholders nor owners, a scenario similar to that of IEU.

Bivens action] which was consolidated by you sua sponte with 99-1628 [the appeal of 98-2225(RLA), the petition for judicial review of the final agency decision authorized by the Administrative Procedures Act (APA), 5 U.S.C. 1 et seq.].

8. That this HUSCA1C has judicial knowledge of the fait accompli that this CA/CP was assessed Trust Fund Liabilities (TFL's) by the Internal Revenue Service (IRS) of the U.S. Department of the Treasury (USDT) for the taxes allegedly owed by IEU after having determined that I was the person responsible for same taxes.

9. That same assessment was followed by liens, levies and collection efforts that constitute the quintessential injury in fact that a citizen can suffer from the government and that same TFLs for $336,000 plus interests are not dischargeable even through bankruptcy.

10. That this HUSCA1C has judicial knowledge of the fait accompli that this CP/CA was not only allowed to appear for IEU before the District Court, after its remand of 99-1628, but ordered by its court's clerk to file a new complaint in order for the remand to effectuate or materialize and that same court acted upon that appearance. That it was not until the eleventh hour that for the first time in 2001 after over five (5) years having appeared Pro Se for IEU besides myself in federal court, that the USAO intervening Attorneys belatedly opposed or objected to same representation.

11. That this HUSCA1C has judicial knowledge of the fact that I filed the Notice of Appeal in 05-1775 both for myself and IEU after the remand over which the District Court sat for almost five (5) years only to railroad our just and timely petition for judicial

review of the final USDE action for a second time, again without having allowed for a modicum of discovery de minimis, a single hearing and much less a full blown trial on its merits.

12. That same filing of the Notice of Appeal for myself and IEU the corporation was more than legally justified based on the law of the case that this own HUSCA1C established in 99-1628, where you ruled consistent with this and others circuits precedent. [3]

13. That this HUSCA1C has judicial knowledge of the fact that it was the District Court's evident errors in its rulings what provoked the supposed late filing of the Notice of Appeal in 05-1775. Same was provoked by its denial of the P/A's legal counsel resignation due to unpaid past due honoraria. As its concomitant this CP/CA was inhibited from filing the Notice of Appeal since the P/A's remained theoretically represented by counsel de jure although certainly not de facto.[4] This error by the District

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Thus, we hold that a corporate officer may sign and file a notice of appeal on behalf of the corporation, as long as the corporation then promptly retains counsel to take up the cudgels and prosecute the appeal. Accord Bigelow v. Brady, 179 F.3d 1164, 1165-66 (9th Cir. 1999) ("We fail to see any compelling reason to refuse to recognize a corporation's notice of appeal, signed and filed by a corporate officer, so long as a lawyer promptly thereafter enters a formal appearance on behalf of the corporation and undertakes the representation."); K.M.A., Inc. v. GMAC, 652 F.2d 398, 399 (5th Cir. 1981) (similar). That condition is satisfied here. Instituto De Educacion Universal Corp. v. United States Department of Education, 209 F.3d 18 (1st Cir. 04/12/2000).

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Court left this CP/CA in a hybrid representation, ergo, a Catch 22 predicament.

14. This HUSCA1C also has judicial knowledge of the fait accompli that every time the courts ordered me to retain counsel for IEU, I was somehow able to comply with same orders, sooner or later. [5]

15. With regards to this strictly legal issue, this HUSCA1C ended ruling here contrary to what it decided in the analogous and contemporaneous

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A second qualification recognized in our cases is that the rights of self-representation and representation by counsel "cannot be both exercised at the same time." United States v. Mitchell, 137 F.2d 1006, 1010 (2 Cir. 1943), cert. denied, 321 U.S. 794,(1944). Although a trial judge may in his discretion permit a party to enjoy both halves of the statutory right, see United States v. Swinton, 400 F. Supp. 805, 806 (S.D.N.Y. 1975) and cases cited therein, Section 1654 does not itself confer any right to "hybrid representation". United States v. Wolfish, 525 F.2d 457, 462-63 (2 Cir. 1975), cert. denied, 423 U.S. 1059, 46 L. Ed. 2d 649, 96 S. Ct. 794 (1976). Accord, United States v. Hill, 526 F.2d 1019 (10 Cir. 1975), cert. denied, 425 U.S. 940, 48 L. Ed. 2d 182, 96 S. Ct. 1676 (1976); United States v. Daniels, 572 F.2d 535 (5 Cir. 1978). Thus, a party seeking to assert his statutory right of self-representation must clearly and unequivocally discharge any lawyer previously retained. O'Reilly v. New York Times Co., 692 F.2d 863 (2nd Cir. 11/02/1982). In the instant case the District Court simply did not allow the discharge.

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The following is a list of some of the legal counsels that appeared for the P-As since the outset of the controversy and that charged over $500,000.00 in honoraria, most of which was paid. Dow Lohnes and Albertson, of Washington, D.C., Andrew Usera of Virginia, Waleska Marrero Melecio and Charles Candelaria Farulla, of San Juan, P.R., Benny Frankie Cerezo, of San Juan, P.R., Balber Pickard Battistoni Maldonado and Van Der Tuin, of N.Y., N.Y., Frank Inserni, of San Juan, P.R., Schuster Usera and Aguilo, of San Juan, P.R. and Julio Morillo Limardo of Bayamon, P.R..

controversy, Taffanelli-Figueroa v. Fajardo-Vélez, 483 F.3d 24 (1st Cir. 04/06/2007), where thou ruled that the dismissal with prejudice for failure to comply with court's orders in situations where the party's lawyer had resigned was too harsh a measure to deserve approval. Our case was stronger in this vein, since not only did we move in time, but the district court had granted the extension to retain counsel only to void it later nunc pro tunc. Just as in Taffanelli, or perhaps even more, our FRCP 60 (b) motion should had been given at least a chance in view of this.

16. That in the controversy below, a FRCP Rule 59 Motion was timely filed regardless of how it was styled and the Court has admonished that in this scenario; "**The running of time for filing a notice of appeal may be tolled, according to the terms of Rule 4 (a), by a timely motion filed in the district court pursuant to Rule** 52 (b) or **Rule 59**." BROWDER v. DIRECTOR, 434 U.S. 257 (U.S. 01/10/1978).

17. That this HUSCA1C has judicial knowledge of the fait accompli that I timely filed the Notice of Appeal for the instant appeal for IEU and myself. This HUSCA1C then ordered attorney Morillo Limardo to cosign it for IEU, which he promptly did.

18. That the instant appeal is supposed to be a reevaluation of the Motion for New Trial timely filed under the Federal Rule of Civil Procedure (FRCP) 60, that was also never considered on its merits or at all since the District Court balked at it deciding that; "This case is under appeal", referring to the fact that 05-1775 was sub judice before you.

19. Although there is extensive jurisprudence on the topic that while a controversy is under appeal the

lower court must defer to the appellate forum, it is not less true that the Court has recognized that no one remains in a better position to provide for Justice than the court of first instance, especially in FRCP Rule 60 (b) motions. [6] Contrary to what happened here, if the lower court would had acted accord the overwhelming evidence before it, and amended its own errors, that appeal would had become moot. [7]

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Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence.*fn2 Rule 60(b)(6), the particular provision under which petitioner brought his motion, permits reopening when the movant shows "any ... reason justifying relief from the operation of the judgment" other than the more specific circumstances set out in Rules 60(b)(1)-(5). See Liljeberg v. Health Services Acquisition Corp., 486 U. S. 847, 863, n. 11 (1988); Klapprott v. United States, 335 U. S. 601, 613 (1949) (opinion of Black, J.). **The mere recitation of these provisions shows why we give little weight to respondent's appeal to the virtues of finality**. Gonzalez v. Crosby, 545 U.S. 524 (U.S. 06/23/2005). (Emphasis ours).

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And last but not least, the pendency of an appeal does not affect the district court's power to grant Rule 60 relief. (Emphasis ours). See Standard Oil Co. of Cal. v. United States, 429 U. S. 17, 18-19 (1976) (per curiam); Wright & Miller, Section(s) 2873 (1994 Supp.). A litigant faced with an unfavorable district court judgment must appeal that judgment within the time allotted by Fed. Rule App. Proc. 4, whether or not the litigant first files a Rule 60(b) motion (where the Rule 60 motion is filed more than 10 days following judgment). Either before or after filing his appeal, the litigant may also file a Rule 60(b) motion for relief with the district court. The denial of the motion is appealable as a separate final order, and if the original appeal is still pending it would seem that the court of appeals can consolidate the proceedings. Stone v. Immigration and Naturalization Service, No. 93-1199 (U.S. 04/19/1995).

20. Absent the will nor the way by the District Court to alter its evidently obvious erroneous ruling with regards to the timely filed FRCP Rule 60 (b) motion, this HUSCA1C also erred by not considering its merits, nor it at all.[8]

21. That this HUSCA1C has judicial knowledge of the fait accompli that this CP/CA timely filed for a Petition For Rehearing En Banc and same has not been decided nor ruled upon.

22. That this HUSCA1C has judicial knowledge of the fact that the P-As timely produced overwhelming evidence of smoking gun and beyond doubt quality that prove without a doubt that the USDE legal counsels acted ultra vires,[9] committed [10] and suborned perjury,[11] obstructed justice,[12] intimidated

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[8] **On the other hand, it is clear that if the motion was a valid Rule 60(b) filing, the Court of Appeals had jurisdiction to review the District Court's denial of relief – either because the denial was a final order from which petitioner filed a timely appeal, or because the District Court had transferred the matter to the Court of Appeals pursuant to §1631.***fn11. Abdur'Rahman v. Bell, 594, 537 U.S. 88 (U.S. 12/10/2002). (Emphasis ours).

[9] They applied the July 23, 1993 regulations retroactively to July 1 of the 1993-94 award year against the express proscription in the Higher Education Act (HEA).

[10] They fraudulently represented to the courts that the decision in In The Matter of MBTI did not consider the July 1993 regulations when in fact it did expressly.

[11] They occluded from all the courts the fact that Office of the Inspector General (OIG) Auditor In Charge (AIC) Nater had been expelled and instead sat Porfirio Rios to testify for Nater.

witnesses,[13] occluded and/or suppressed exonerating evidence [14] and committed fraud upon all the intervening courts. [15]

23. That this HUSCA1C has judicial knowledge of the fact that the overwhelming exonerating evidence timely produced of smoking gun and beyond doubt quality proves the following:

a. That the application by the USDE legal counsels of the July 23, 1993 regulation to support the clock hour "finding" in the OIG pseudo-audit for the award year that started in July 1, 1993 was against the law. This in addition to the fact that it

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They also coached AIC Lugo to falsely testify on the month the refunds were allegedly paid and so inofficiously that the dates in all the cases testified about did not match the month where he was told to testify that they were supposedly paid.

12

They denied the existence of the Nater v. USDE controversy before the U.S. Merit Protection Board, after he had been expelled as a result of his flaws in IEU's audit.

13

They admittedly ex-parte called the two independent Certified Public Accountants (C.P.A.'s) that I had announced as witnesses to the ALJ intimidating one of them.

14

They suppressed from all the courts the exonerating evidence contained in the OIG's own Quality Assurance Review Team Report and the Pell Grant program official documents that proved that the refunds were paid, when, and for how much.

15

They fraudulently represented to the courts that the evidence in the USDE official documents proving that the refunds had been paid by way of direct debit to IEU's account in total control of and by the USDE Finance Division, was allegedly not proof of payment when they knew this was, is and shall remain false.

was against three decisions of their own ALJ's. See HEA and In the Matter of Denver Paralegal Institute, MBTI and Instituto de Educacion Universal (Exhibit 1).

b. That the excess cash "finding" that resulted from the OIG pseudo-audit was so crassly, grossly and wantonly inflated that it was, is and shall remain a mathematical impossibility. Equally or more important, it was rejected by the own OIG's Quality Assurance Review Team Report (QARTR) on the expelled AIC Nater's work. The USDE legal counsels suppressed this exonerating evidence from the courts, neglected to produce it through the Freedom of Information Act (FOIA) avenues, occluded the fact that Nater had been expelled from the OIG for his flaws in IEU's audit and denied me the existence of the Nater v. USDE record at the U.S. Merit System Protection Board where I was able to learn from the pertinent and relevant QARTR despite their obstruction of justice. See Exhibit 2.

c. The USDE legal counsels knew that we had paid the fraudulently imputed "unpaid" refunds, since we had resubmitted their payment vouchers so that the refunds were made by way of a direct debit to our funds authorization first and our funds per se second. Since they fraudulently represented to the courts that allegedly the above evidence emerging from official USDE documents was not enough to prove the payment of the 512 refunds imputed as unpaid, we then timely produced the smoking gun evidence made reference to respect to each one of them, showing the specific social security numbers of each one, the amount of the refunds, the date and the

batch number in which each one was processed, ergo paid. See Exhibit 3. [16]

More than for anything else, it is because of the quality of this exonerating evidence that I will not get tired of making absolutely certain that I take you out of your myriads of terrible errors related to this controversy and that you make sure that the lawyers responsible for this grave Injustice plus your waste of time and effort end paying for their malice, perfidy and opprobrium disguised as overzealousness.

24. That this HUSCA1C has judicial knowledge of the fact that the USAO intervening Attorneys were derelict in their ministerial duties as mandated by the U.S. Attorney's Manual and their ethical duties as mandated by their corresponding Lawyer's Bar Rules of Ethics, by instead of duly investigating the facts and sifting the exonerating evidence when acting as their client-agency (the USDE) legal representatives, they egregiously and wantonly elected to cover up all the evidently obvious violations committed by their client agency legal counsels, ergo, converted their abuse of the legal process into a malicious prosecution of their own. See Angel Ruiz Rivera v. Alberto R. Gonzales, Et Al., Et Al., 08-1560 at the U.S. District Court for the District of Columbia.

25. That this HUSCA1C has judicial knowledge of the fait accompli that this CP/CA has timely filed various motions to publicly denounce that heretofore all the intervening courts have not only decided contrary to the overwhelming evidence mentioned

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[16] If someone in this HUSCA1C happens to be really interested in revisiting this controversy, see Motion To Facilitate A Ruling, to save time and effort since there the hard exonerating evidence is fully digested.

above, but worse, covered up all of the above and elsewhere denounced fraud and misconduct. [17]

26. In my timely filed motion in the instant appeal where I challenged the Honorable Judge Selya's improvident decision to forfeit my appeal rights by simplistically deciding that I supposedly do not have standing to defend myself of this evidently obvious Injustice, for allegedly having ceased to be a party to the proceeding below, I timely produced precedents from the Court itself, plus eight (8) circuits including thyself, that have decided that a person or entity that has not been a party to a case or controversy has the right to appear on its appeal if negatively affected by same decision and/or order, especially in the case of a named party like myself here. [18]

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[17] This in addition to having judicial knowledge of the fait accompli that desperate for his quest for Justice this CP/CA filed a Complaint against nine (9) of the Honorable Federal Judges of this HUSCA1C Judicial Council for having covered up the evidently obvious judicial misconduct of the Honorable District Court Judge Fuste in 96-1893, [00-1609 (DRD) Appeal 1-1611], reason why this HUSCA1C should had recused itself from any dealings with this litigant at least for the appearance of Justice if not for Justice.

[18]

See Hispanic Society of New York City Police v. New York City Police 806 F.2d 1147, (2nd Cir. 1986); In re Piper Funds, Institutional Government Income Portfolio Litigation, 71 F.3d 298, 301 (8th Cir. 1995); In re Estate of Marcos Human Rights Litigation, 94 F.3d 539 (9th Cir. 1996); United States v. Kirschenbaum, 156 F.3d 784 (7th Cir. 1998); Kaplan v. Rand, 192 F.3d 60 (2d Cir. 1999); Microsystems Software, Inc. v. Scandinavia Online AB, 226 F.3d 35 (1st Cir. 2000); Castillo v. Cameron County, 238 F. 3d 325 (5th Cir. 2001); Securities and Exchange Commission v. Forex Asset Management, 242 F.3d 325 (5th Cir. 2001); Karaha Bodas Co. v. Perusahaan Pertambangan, 313 F.3d 70 (2d Cir. 2002); Devlin v.

We have never, however, restricted the right to appeal to named parties to the litigation. In *Blossom* v. *Milwaukee & Chicago R. Co.*, 1 Wall. 655 (1864), for instance, we allowed a bidder for property at a foreclosure sale, who was not a named party in the foreclosure action, to appeal the refusal of a request he made during that action to compel the sale. In *Hinckley* v. *Gilman, C., & S. R. Co.*, 94 U. S. 467 (1877), we allowed a receiver, who was an officer of the court rather than a named party to the case, to appeal from an order "relat[ing] to the settlement of his accounts," reasoning that "[f]or this purpose he occupies the position of a party to the suit." *Id.*, at 469. More recently, we have affirmed that "[t]he right of a nonparty to appeal an adjudication of contempt cannot be questioned," *United States Catholic Conference* v. *Abortion Rights Mobilization,*

Scardelletti, No. 01-417, June 10, 2002; Goya Foods, Inc. v. Wallack Management Co., 290 F.3d 63 (1st.Cir.5/17/2002); Plain v. Murphy Family Farms, 296 F.3d 975 (10th Cir. 07/16/2002); Cardoza v. Pacific States Steel Corporation, 320 F.3d 989 (9th Cir. 2003); AAL High Yield Bond Fund v. Banc of America Securities, 361 F.3d 1305 (11th Cir. 2004), Churchill Village v. General Electric, 361 F.3d 566 (9th Cir. 2004); Pediatric Specialty Care v. Arkansas Department of Human Services, 364 F.3d 925, (8th.Cir. 2004); In re Sealed Cases, 363 U.S. App. D.C. 214, 381 F.3d 1205 (D.C. Cir. 2004); United States v. Alisal Water Corp., No. 02-15907 (9th Cir. 2005); Velez-Diaz v. Vega Irizarry, 421 F.3d 71 (1st.Cir. 9/2/2005); Official Committee of Unsecured Creditors of WorldCom, Inc. v. Securities and Exchange Commission, 467 F.3d 73 (2d Cir. 2006).

Inc., 487 U.S. 72, 76 (1988), given the binding nature of that adjudication upon the interested nonparty. Devlin v. Scardelletti, No. 01-417, June 10, 2002.

In view of all of the above, this HUSCA1C has the legal, ethical and moral duty to rule upon our timely filed Petition for Rehearing En Banc, and more importantly explain why you have departed from all these circuits' precedents including yours and the own Court's admonishment in this vein, and have chosen instead to work a manifest injustice, something which is outrageous enough. Nevertheless, you should also explain why you have covered up and shielded the government barristers evidently obvious fraud upon all the courts, overt violation of the candor and decorum owed to the dignity of them all courts including yours, and allow them to get away with this conduct unbecoming of a U.S. lawyer, with absolute impunity.

That for all the aforementioned reasons, this HUSCA1C should rule or decide upon the timely filed petition for rehearing en banc, as a matter of principle and decency to say the least, or in the alternative, recuse itself from the instant appeal and transfer it to the Circuit Court of Appeals for the D.C. Circuit, as prayed before with more than enough justifications in all my previous motions, all of them unopposed. So we state, allege and pray. Respectfully submitted, today September 29, 2008.

Angel Ruiz Rivera
P.O. Box 191209
San Juan, P.R.,00919-1209.
787-435-3512

CERTIFICATE OF COMPLIANCE

I, Angel Ruiz Rivera, appearing here Pro Se, hereby certify that this Motion complies with the Rules of this HUSCA1C.

CERTIFICATE OF SERVICE

I, Angel Ruiz Rivera, appearing here Pro Se, hereby certify that I have served a copy of this Motion through Express Mail of the U.S. Postal Service to the appearing counsel for the Defendants/Appellees, Ms. Barbara Biddle, Esq., AUSA, to her address of record; U.S. Department of Justice, 950 Pennsylvania Ave. NW, Room 9124, Washington, D.C. 20530 and to IEU's appearing counsel Julio Morillo Limardo, Esq., personally.

EXHIBITS

1. Applicable HEA section, and in the Matter of Denver Paralegal Institute, MBTI and Instituto de Educacion Universal (IEU).

2. Specific Observations section of the QARTR and other excerpts proving the flaws in the excess cash "finding".

3. Unpaid refunds smoking gun exonerating evidence.

EXHIBIT 1

That the application by the USDE legal counsels of the July 23, 1993 regulation to support the clock hour "finding" in the OIG pseudo-audit for the award year that started in July 1, 1993 was against the law. This in addition to the fact that it was against three decisions of their own ALJ's. See HEA and In the Matter of Denver Paralegal Institute, MBTI and Instituto de Educacion Universal.

Higher Education Act of 1965 as amended, Sec. 482.

(c) Delay of Effective Date of Late Regulations – Any regulatory changes initiated by the Secretary affecting the programs pursuant to this title that have not been published in final form by December 1 prior to the start of the award year **shall not become effective** until the beginning of the second award year after such December 1 date.

EXHIBIT 2

That the excess cash "finding" that resulted from the OIG pseudo-audit was so crassly, grossly and wantonly inflated that it was, is and shall remain a mathematical impossibility. Equally or more important, it was rejected by the own OIG's Quality Assurance Review Team Report (QARTR) on the expelled AIC Nater's work. The USDE legal counsels suppressed this exonerating evidence from the courts, neglected to produce it through the Freedom of Information Act (FOIA) avenues, occluded the fact that Nater had been expelled from the OIG for his flaws in IEU's audit and denied me the existence of the Nater v. USDE record at the U.S. Merit System Protection Board where I was able to learn from the pertinent and relevant QARTR despite their obstruction of justice.

Pertinent and Relevant Excerpt from the occluded QARTR

"Specific Observations

2. The audit work papers contain two different methods for calculating imputed interest. D-1 calculates interest on a daily basis, **but the logic is faulty.** D-1-1 calculates interest on a six-month basis **which cannot be justified**. The report says we calculated interest on a monthly basis. **This statement obviously is not supported by the work papers.** "

EXHIBIT 3.

The USDE legal counsels knew that we had paid the fraudulently imputed "unpaid" refunds, since we had resubmitted their payment vouchers so that the refunds were made by way of a direct debit to our funds authorization first and our funds per se second. Since they fraudulently represented to the courts that allegedly the above evidence emerging from official USDE documents was not enough to prove the payment of the 512 refunds imputed as unpaid, we then timely produced the smoking gun evidence made reference to respect to each one of them, showing the specific social security numbers of each one, the amount of the refunds, the date and the batch number in which each one was processed, ergo paid.